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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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JUN 20 1998

In the Matter of)

Petition for Declaratory Ruling)
That Section 332(c)(7)(B)(iv) of)
the Communications Act Preempts State)
Court Actions Limiting the Construc-)
tion of Cellular Facilities Based)
Upon Radio Frequency Emission Concerns)

File No. PCOM-2539
Disabilities Issues Task
Force
ET Docket 93-62

REPLY COMMENTS

Something has gone wrong with the laws of the
United States of America. We have a Constitution which
does not give responsibility over health and safety to the
Federal government, and we have an Amendment (#10) to that
Constitution which says, "The powers not delegated to the
United States by the Constitution, nor prohibited by it to
the States, are reserved to the States respectively, or to
the people." We have another Amendment (#1) saying "Congress
shall make no law . . . abridging the freedom of speech." We
have another Amendment (#5) which says that "No person shall
. . . be deprived of life, liberty, or property, without due
process of law; nor shall private property be taken for public
use without just compensation." We have another Amendment (#7)
which states that "No fact tried by a jury shall be otherwise
reexamined in any Court of the United States than according to
the rules of the common law." We have another Amendment (#14)
which says that "nor shall any State deprive any person of life,
liberty, or property, without due process of law; nor deny to
any person within its jurisdiction the equal protection of the

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laws." We have a National Environmental Policy Act which requires all agencies of the Federal Government to prepare environmental impact statements on all "major Federal actions significantly affecting the quality of the human environment" (42 USC 4332(C)), and the various States have State laws protecting the environment in the case of activities occurring within State borders. The protection of life and liberty guaranteed by the 5th and 14th Amendments has been deemed so important that additional Civil Rights Laws have been enacted from time to time to make sure that discrimination does not occur in these United States, nor in the individual States, against any citizen of any State on the basis of that person's race, color, national origin, sex, or handicap. And yet, somehow, we have here at the present time a bizarre situation in which the Congress of the United States added one single sentence to a voluminous 1996 law, rather late in that law's legislative history, and on the basis of that single sentence a certain group of commercial interests are acting like children in a candy factory who can now have anything at all that they want, anywhere at all that they want it, whenever they want it, because none of the laws of this great land apply to them any more, not even laws holding them liable for their own actions. Something has gone drastically wrong with this country if such immunity from the laws of the United States, which not even the President of the United States enjoys, can be so easily granted to the Telecommunications Industry Corporations by a delegated arm of the Executive branch of the Federal government, which

is not supposed to have any legislative or judicial power of its own. The Federal Communications Commission simply does not have the power to take away the right of free speech at zoning board hearings, on health or any other matters, as has been proposed in WT Docket No. 97-197, nor does it have the power to forbid the enforcement of its own safety regulations, as has also been proposed in WT Docket No. 97-197, nor does it have the power to abolish virtually every zoning regulation in the United States that applies to broadcast antennas, as has been proposed in MM Docket No. 97-182, and in a non-docketed proceeding, DA 96-2140/FCC 97-264, nor does it have the power to ignore Federal environmental legislation and to abolish State environmental legislation, nor does it have the power to abolish Civil Rights laws or to deny due process to citizens, nor does it have the power to do what it is considering doing here, i.e. to abolish common law liability in the case of injury resulting from nuisance, trespass, or negligence.

All that Section 704(a)(7)(B)(iv) says is that State and local governments may not regulate the placement, construction and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions. It does not say the Constitution of the United States is hereby overturned. It does not say "No State or Federal laws henceforth apply to personal wireless service providers." It certainly does not say states and local governments are not allowed to interpret or

enforce the Commission's regulations. It does not say States and local governments are not allowed to determine whether installations comply with the Commission's regulations in any way they see fit to so determine. It does not say citizens of states are no longer allowed to exercise free speech and discuss health effects anywhere, any time they choose, in connection with anything whatsoever, including broadcast antennas for personal wireless services, and it certainly does not prohibit citizens from disagreeing with the Commission's safety regulations, if that is their opinion, and which is vital in the continued discussion of a scientific endeavor which is far from unanimously concluded. And most of all, it does not say that if in fact citizens are directly injured by radio frequency emissions which comply with the Commission's regulations, that the common law is hereby abolished and they will have no recourse. That is not what that sentence says, and if it did say that it would be blatantly unconstitutional.

I am President of the Cellular Phone Taskforce, and have submitted many sets of Comments, Petitions for Reconsideration, and other pleadings in many Commission Docketed and non-docketed proceedings on behalf of that organization, but I am filing today as an individual, angry person--angry because an arm of the United States government, by attempting to render a \$70 billion industry immune from one law after another, is assisting in taking away virtually all of my civil rights, including, possibly, my life. By virtue of permitted facilities proliferating in cities, countryside, and along highways and

in hospitals and in libraries and in virtually all public places, I have been injured, permanently disabled, rendered unable to live in my home or my city, unable to travel the nation's highways, unable to travel the nation's trains or airplanes, unable to obtain health care, and handicapped in the use of libraries and other public facilities. I am also permanently unemployable, also by virtue of the proliferation of permitted business equipment which emits radiofrequency and other electromagnetic radiation. The Federal Communications Commission does not have the power to eliminate the only avenue of redress that I, as an individual, and also on behalf of the class of individuals in the United States who, like me, are electrically sensitive, and on behalf of an endangered environment, have remaining to me, namely suits at common law in State Court. The Federal Communications Commission is not a judicial entity and does not have the power to judge, as a matter of law, whether an injury, or a nuisance, or a trespass, has in fact taken place at any particular locality.

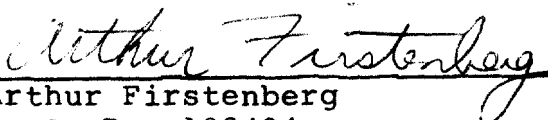
I concur with the Comments submitted to the Commission by Plaintiffs in Grundman, Carter et al. v. 360° Communications Company in this matter on January 5, 1998, in opposition to 360°'s Petition for Declaratory Ruling of Federal Preemption.¹ I also concur with Plaintiffs in requesting the Commission to extend the time for comments for a minimum of thirty (30) days.

¹ Comment of Plaintiffs in Action Against 360° Communications Company Re. 360°'s Petition for Declaratory Ruling of Federal Preemption, Jan. 5, 1998, File No. DA 97-2539.

I part with Plaintiffs where they say, "No one wants to impede the buildout of the cellular and personal communications industries." (page 11). I am an injured party, and I am an author, researcher, and consultant in the area of electromagnetic radiation and its effects on human beings. I have researched this field in depth for the past 17 years. I am medically trained in an accredited American medical school. (University of California, Irvine, California College of Medicine, 1978-1982). I have been consulted as an expert in this area by physicians, who are distributing my book on the subject to their patients, and I have given expert testimony in this field in a legal case in Ireland. I am President of an organization which to date has heard from well over 1,000 physicians, nurses, organizations, and individuals giving testimony of widespread serious illness from the recent (year and a half) proliferation of personal communications facilities throughout the United States, and also throughout much of the rest of the world. It is my firm opinion that the buildout of the cellular and personal communications industries has already gone too far, and must be dismantled before it goes any further and before any more money is at stake, because masses of people are being injured. This new digital technology is not the same as what has been on this earth for the past fifty years and more, and it is, in my opinion, an environmental catastrophe and must be halted. At the very least a nationwide moratorium must be immediately put in place while there are open, federal hearings into the problem, brought before the Commission by myself and others, of radio wave sickness,

known more recently as electrical sensitivity, and which must be discussed in open forum. There is at present not a scientific consensus that either the ANSI/IEEE or the NCRP Guidelines are adequately protective of the public, and in light of increasing numbers of allegations of sickness and death from cellular phone base station radiation, the buildout of the new digital communications networks cannot be a foregone conclusion.

Respectfully submitted,


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January 17, 1998
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CERTIFICATE OF SERVICE

I certify that I have this 17th day of January, 1998 sent by first class mail, postage paid, a copy of the foregoing Reply Comments to each of the following:

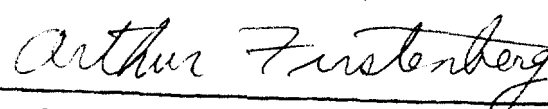
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and that I also sent this day by Express Mail a copy of said Reply Comments to:

Dr. Robert Cleveland, Jr.
Office of Engineering and Technology
Federal Communications Commission
2000 M Street, N.W., Room 266
Washington, DC 20554


Arthur Firstenberg